

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
July 19, 2012
AMENDED**

Members Present

Bill O'Brien, Chairman
Vic Lessard
Tom McGuirk
Bryan Provencal
Ed St. Pierre
Henry Stonie (Alternate)

Others Present

Kevin Schultz, Building Inspector
Joan Rice, Secretary

Chairman O'Brien called the meeting to order at 7:00 p.m.

Chairman O'Brien introduced the members of the Board.

The Pledge of Allegiance was said.

PETITION SESSION

Chairman O'Brien announced that Petition 26-12 for 66 Kings Highway and Petition 29-12 for 121 Ocean Blvd. had been withdrawn.

18-12 ... Rehearing of Don Brust through Ahmed R. Ahmed for property located at 225 Ocean Blvd. seeking relief from Article III, Use Regulations (unenumerated use) to allow fusion cigar and Hookah Lounge Inc. which is an establishment that exclusively occupies the 2nd floor of 225 Ocean Blvd. and is primarily engaged in retail sales of tobacco and alcohol products for consumption by customers on the premises. It shall also sell non-alcoholic drinks, hot and cold, light bar snacks, and light live and D.J. music at night. The property is located on Map 282, Lot 174, and in a BS Zone.

Attorney Mark Ryder came forward and was joined later by Mr. Ahmed Ahmed. Attorney Ryder went through the five criteria and said he felt they had been met. Attorney Ryder stated that according to the ordinance this is an allowed use. The only difference is that smoking will be allowed. It is not a substantial variation from the ordinance. It can be compared to the approval of the nano-brewery. Attorney Ryder said they are not altering the footprint. The only changes are those for fire and safety. Attorney Ryder said he did not feel it would diminish value of surrounding properties because one of the abutters allows smoking in their hotel. This will be highly regulated by the State Liquor Commission so there is no worry about illicit drugs being on the property. Attorney Ryder said this is a legitimate business.

Questions from the Board

Mr. Lessard said he did not feel that the petitioner had shown hardship. This type of establishment is not in the books. The ordinance should be changed if this is to be allowed. Attorney Ryder said there is no difference from the nano-brewery except that smoking would be allowed.

Mr. McGuirk asked about food and alcohol being served and hours of operation. Mr. Ahmed said no food other than snacks would be served, alcohol would be served and hours of operation would be noon until 1:00 a.m.

Mr. McGuirk expressed concern about the possibility of an inebriated customer knocking over the hookah and spreading burning embers creating the possibility of a fire. Mr. Ahmed said the hookahs are sealed and this would be very unlikely. Also the building will be sprinkled. Mr. McGuirk asked how far this building was from the abutting property. Mr. Ahmed replied it is 4 feet from the abutting property. Mr. McGuirk said sprinklers only allow people to get out and do not prevent a fire. Attorney Ryder said that many restaurants have open flame candles on tables for ambience.

Mr. St. Pierre asked about the existing wood platform and if it was an outside deck. Mr. Ahmed said that it is a fire escape. Mr. St. Pierre asked about what kind of snacks would be served. Mr. Ahmed said items like nuts and bar mix. Mr. St. Pierre asked if Mr. Ahmed interpreted the state law on cigar bars to allow the sale of snacks. Attorney Ryder said the Liquor Commission has said this is allowed. Mr. St. Pierre said the letter on this matter from the Town Attorney states that no food of any kind, including snacks, is allowed. Mr. Ahmed said they would then forgo the snacks. Mr. St. Pierre asked if there would be any selling of tobacco related items like hookahs and pipes. Mr. Ahmed replied that there would not be any sales of hookahs and pipes.

Mr. Provencal said he felt the petitioner was here for a variance for an un-enumerated use.

Comments from the Audience

Kevin Lonergan, 7 Windmill Lane, said he disagreed with Attorney Ryder on all five criteria. There is no justice in allowing smoking in an enclosed room. The value of every property at Hampton Beach would be diminished. The beach is family friendly and this business is not in keeping with that ideal. This business is contrary to the Beach Master Plan. Also, under the cigar bar ordinance there is no mention of hookah.

Attorney Eileen Nevins came forward. Attorney Nevins said she represents the Hampton Beach Village District and the Ships Inn in this matter. This type of use should be put before the voters of the Town of Hampton. The petition does not meet the five criteria and detailed rationale was provided on why each of the five criteria was not met.

Attorney Nevins said the Village District and Hampton Beach Area Commission have worked very hard to make Hampton Beach family friendly. The abutter, Ships Inn, objects because this establishment would deter families once they are aware of it. The World Health Organization has issued a statement on hookah use saying 45 to 60 minutes of hookah is equal to smoking 100 cigarettes. To allow this establishment is to encourage health hazards. There is also the issue of second hand smoke for employees, etc.

Brian Lapham, 27 High Street, said every business owner he has spoken to has been very much against allowing this establishment.

John Nyhan, 2 Walnut Avenue, said he was present because he is active in Experience Hampton and is Chairman of the Hampton Beach Area Commission. Mr. Nyhan said his view of the new Hampton Beach era includes families. Hampton Beach should be restored as a family oriented beach according to the Master Plan. A hookah lounge does not fit in the Master Plan.

Charlie Preston came forward and said it is important to adhere to the law and if necessary change the ordinance. He asked about the status of the current litigation. Chairman O'Brien said the judge ruled in the Board's favor after Tuesday's hearing which allowed this rehearing of the petition to occur. The petitioner had filed suit on a procedural matter.

Attorney Ryder said there had been a lot of opinions that the hookah lounge would bring down the moral fiber of the beach. He said there is no evidence that this would occur.

Back to the Board

Mr. Provencal said this is voting on an un-enumerated use. It doesn't matter if the Board likes or does not like hookah. Mr. Provencal said he did not think the Board has the authority to do this. The State has determined that this is a use.

Mr. St. Pierre said the leaders of the community are stepping forward against this and this carries weight with him.

Mr. McGuirk said Bingo, which is not as controversial, was denied at Town Meeting last year. This may indicate that the Town would not want this kind of use either. Mr. McGuirk said the petitioner has the opportunity to go through Town Meeting.

Mr. Lessard said the petitioner has presented himself as being honest. Mr. Lessard said he has also been honest and always has been in his dealings in the Town; and he has always voted on behalf of the people no matter what. In checking with his heart doctor, he was told that hookah smoking is a dangerous health hazard. Mr. Lessard further stated there is no hardship and the petitioner should go to the people. If you want this, change the law via a citizen's petition of the zoning ordinance. If the people approve, so be it. Also Simplex

says a variance is not the answer. The law must be changed and the Planning Board is responsible for doing that.

Moved by Mr. McGuirk and seconded by Mr. Lessard, to deny Petition 18-12.

Chairman O'Brien asked the petitioner if they wished to withdraw or proceed with the vote after hearing the Board discussion. Attorney Ryder said they wanted to proceed.

Chairman O'Brien asked the Board if they felt the five criteria had been met.

Mr. McGuirk said the spirit of the ordinance was not met and it would be contrary to the public interest. Mr. McGuirk further stated that the values of properties would be diminished and there is no hardship because there are other uses for the building. Mr. Lessard said the five criteria were not met. Mr. Provencal said he felt the voters should decide and it would be contrary to the public interest. Mr. St. Pierre said it was contrary to the public interest and should go to the voters at Town Meeting and there is no hardship because no one else can do this in Hampton. Chairman O'Brien said he would abstain because he just appeared in Superior Court on Tuesday to defend the Board's right to hold this rehearing.

Chairman O'Brien read each of the five criteria listed under RSA 674:33 separately for each individual Board Member and asked each member if the criteria had been met:

McGuirk:

Criteria 1: No

Criteria 2: No

Criteria 3: No

Criteria 4: No

Criteria 5: No

Lessard:

Criteria 1: No

Criteria 2: No

Criteria 3: No

Criteria 4: No

Criteria 5: No

Provencal:

Criteria 1: No

Criteria 2: Yes

Criteria 3: No

Criteria 4: Yes

Criteria 5: Yes

St. Pierre:

Criteria 1: No

Criteria 2: No

Criteria 3: No

Criteria 4: No

Criteria 5: No

O'Brien:

Abstain

VOTE: 4-0-1 (O'Brien). The Motion to deny Petition 18-12 passed.

27-12 ... The petition of Pearly G. and Jane Deneault for property located at 125 Kings Highway and 5 13th Street seeking relief from Article IV, Sections 4.1, 4.1.1, 4.2 and Footnote 22, 4.3, 4.5.1, 4.5.2, 4.5.3, 4.7, Article VI, Section 6.3.1, Article VIII, Sections 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5, 8.2.6 to request lot line adjustment for premises at 125 Kings Highway and 5 13th Street to provide the residence at 125 Kings Highway with two parking spaces. This property is located on Map 183, Lot 52 and Map 183, Lot 45 and in a RA Zone.

At this time Chairman O'Brien stepped down from the Board and Henry Stonie, Alternate, stepped up to the Board. Mr. McGuirk acted as Chairman.

Pearly Deneault, Petitioner, and Attorney Steven Ells, Holmes & Ells, came forward. Attorney Ells said the petitioner would like to move the existing northerly lot line of 125 Kings Highway to a new lot line shown on the plan to provide an area for a driveway and parking. The lot at 5 13 Street will retain its original parking. Attorney Ells went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. Stonie asked if they were denied in 2009. Attorney Ells said they were denied for an extension of the building, but not for a change of lot line. Mr. Schultz checked the records and said the petition in 2009 which was denied was for moving the lot line.

Mr. McGuirk said more information is needed from 2009 before the Board can act on this petition.

Moved by Mr. Lessard and seconded by Mr. Stonie, to continue Petition 27-12 until the next meeting on August 16, 2012 at which time it will be first on the Agenda.

VOTE: 5-0-0. Motion passed unanimously.

At this time Mr. O'Brien stepped up as Chairman and Mr. Stonie stepped down from the Board.

28-12 ... The petition of Jaeger Family Rev. Living Trust Harry L. & Carolann S. Jaeger, Trustees for property located at 39 Mooring Drive seeking relief from Article 1.3 and Article IV, Section 4.5.3 to erect a roof structure over an existing (non-conforming) wooden deck to create a 12' x 12' enclosed "three-season" porch. Note: The existing non-conformity is rear setback. Requesting 7.5' setback versus the 10' minimum required. This property is located on Map 289, Lot 55 and in a RB Zone.

Harry and Carolann Jaeger, Petitioners, came forward. Mr. Jaeger said they hoped to put a roof and screened area around an existing wooden deck. Mr. Jaeger went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. McGuirk said he felt this was a reasonable request considering the circumstances. Mr. St. Pierre agreed.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. Lessard and seconded by Mr. Provencal, to grant Petition 28-12.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members agreed that they had.

VOTE: 5-0-0. Motion passed unanimously.

30-12 ... The petition of Dean M. Gibson for property located at 25 Highland Avenue seeking relief from Article I, Section 1.3, Article IV, Sections 4.5.1, 4.5.2, 4.5.3 and Aarticle VIII, Sections 8.2.3, and 8.2.4 to propose that existing Bldg. #1 (ranch) be replaced with a new small 1284 sq. ft. 2-story dwelling, renovate existing 2-family Bldg. #2-rear and convert into a single family dwelling with new 6 pitch gable roof and remove existing roofed porch and stairs connecting Bldg. #2 and Bldg. #3. Each unit will have 2 conforming stacked parking spaces. This property is located on Map 274, Lot 128 and in a BS Zone.

Dean Gibson, Petitioner, said he has a small existing ranch in poor condition. He would like to take it down and replace with a 1284 sq. ft. two-story building. He would be going from four units to three making parking conforming. All abutters are in favor of this project. Mr. Gibson went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. St. Pierre said he felt this was the right way to go and it will fit in the neighborhood.

Mr. McGuirk said the four foot setback was not being met. Mr. Gibson said he felt he was bringing the property closer to conforming. Mr. McGuirk said he felt there could be a way to make the four foot setback. Chairman O'Brien suggested shifting the building to the East and being adjacent to the parking spaces; then the four foot side setback could be achieved.

Comments from the Audience

Richard Reniere, 29 Highland Ave, said Mr. Gibson has done outstanding work on the building and it is not fair to make him do adjustments where there would be a loss of parking spaces. Mr. Reniere urged the Board to grant this petition.

Back to the Board

Moved by Mr. Lessard and seconded by Mr. Provencal, to grant Petition 30-12 with the stipulation that there will be no enclosing of the front porch or building over the porch.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members agreed that they had.

VOTE: 5-0-0. Motion passed unanimously.

31-12 ... The petition of Albert R. Fleury for property locate at 6 Johnson Avenue seeking relief from Article III, Section 3.26(a) to remove existing dwellings and create parking areas on parcel. Parcel abuts existing parking areas for patrons of Wally's Pub. This property is located on Map 293, Lot 56 and in a RB Zone.

At this time Mr. Lessard and Mr. Provencal stepped down from the Board and Mr. Stonie stepped up to the Board.

Albert Fleury and Attorney Francis Bruton came forward.

Chairman O'Brien said the lot number as submitted by the applicant is incorrect. This could lead the way to appeals and rehearing's because it was advertised incorrectly. It would be prudent to resubmit.

Attorney Bruton said they would like to proceed at a time when there are five voting members of the Board. Chairman O'Brien explained that two elected members of the Board had to step down because of a conflict of interest; that the Board has just two alternates

and one has just undergone back surgery; and it is unlikely that the Board will have five members. Attorney Bruton asked to withdraw and resubmit for the August meeting.

Chairman O'Brien said he would like to see more explanation of the features on the lot drawing, such as, where, how tall, and materials for the walls used for noise attenuation; where one-way entry signs would be located; where no-entry signs would be located; where the Police Chiefs suggested lot full sign would be located; the driving area immediately behind Wally's Pub designated one-way; type of illumination, location, and pointing direction of all lights in the parking area; parking lot surface; snow storage areas.

Chairman O'Brien requested a drawing detailing these features be submitted seven days prior to next month's hearing.

Steve White, resident, asked if any environmental or road studies had been done. Chairman O'Brien said these items are under the purview of the Planning Board.

Sandra Marsoheni, resident, said she would like to see elevation changes on the plan since she is concerned about water run-off from the lot onto her lot. Chairman O'Brien asked the applicant to address the matter and noted that this would be primarily addressed by the Planning Board.

Moved by Mr. St. Pierre and seconded by Mr. McGuirk, to allow Petition 31-12 to be withdrawn without prejudice. Petition will be resubmitted for next month and will be second on the Agenda at the August 16, 2012 meeting.

VOTE: 4-0-0. Motion passed unanimously.

BUSINESS SESSION

Adoption of Minutes

Moved by Mr. Lessard and seconded by Mr. St. Pierre, to approve the Minutes of June 21, 2012.

VOTE: 4-0-1 (Stonie). Motion passed.

The Board then held a discussion at the request of the Building Inspector on the property formerly known as the old Odd Fellows lot.

Adjournment

The meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Joan Rice
Secretary

